

Exhibit BB

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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Z & J LLC d/b/a APPEALTECH,	:	Index No.: 650620/2018
	:	
Plaintiff,	:	
	:	
-against-	:	
	:	
LAURENCE MYNES and COUNSEL PRESS, INC.,	:	
GLADSTONE INVESTMENT CORPORATION,	:	
GLADSTONE MANAGEMENT CORPORATION,	:	
GLADSTONE ADMINISTRATION, LLC and	:	
JONATHAN WALLACH	:	
	:	
Defendants.	:	
	:	
-----X		

REPLY TO COUNTERCLAIM OF DEFENDANT JONATHAN WALLACH

Plaintiff/Counterclaim Defendant Z & J LLC d/b/a AppealTech (“AppealTech”) and Counterclaim Defendant Michael Kestan (“Kestan”, collectively with AppealTech, the “Counterclaim Defendants”), by and through their attorneys, reply to the Counterclaim of Defendant/Counterclaim Plaintiff Jonathan Wallach (“Wallach”) as follows:

- Counterclaim Defendants deny the allegations contained in Paragraph 1 of the Counterclaim.
- Counterclaim Defendants admit the allegations contained in Paragraph 2 of the Counterclaim.
- Counterclaim Defendants deny the allegations contained in Paragraph 3 of the Counterclaim, but admit that Wallach filed a motion to dismiss the Amended Complaint filed in this action.
- Paragraph 4 of the Counterclaim states legal conclusions to which no response is required.

5. Paragraph 5 of the Counterclaim states legal conclusions to which no response is required.

6. Paragraph 6 of the Counterclaim states legal conclusions to which no response is required.

7. Counterclaim Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Counterclaim.

8. Counterclaim Defendants admit the allegations contained in Paragraph 8 of the Counterclaim.

9. Counterclaim Defendants admit the allegations contained in Paragraph 9 of the Counterclaim.

10. Counterclaim Defendants admit the allegations contained in Paragraph 10 of the Counterclaim.

11. Counterclaim Defendants admit the allegations contained in Paragraph 11 of the Counterclaim.

12. Counterclaim Defendants deny the allegations contained in Paragraph 12 of the Counterclaim, but admit that Wallach commenced employment with AppealTech in March 2014.

13. Counterclaim Defendants admit the allegations contained in Paragraph 13 of the Counterclaim.

14. Counterclaim Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Counterclaim, but admit that Counterclaim Defendants were aware that Wallach was gay.

15. Counterclaim Defendants admit the allegations contained in Paragraph 15 of the Counterclaim.

16. Counterclaim Defendants deny the allegations contained in Paragraph 16 of the Counterclaim.

17. Counterclaim Defendants deny the allegations contained in Paragraph 17 of the Counterclaim.

18. Counterclaim Defendants deny the allegations contained in Paragraph 18 of the Counterclaim.

19. Counterclaim Defendants deny the allegations contained in Paragraph 19 of the Counterclaim.

20. Counterclaim Defendants deny the allegations contained in Paragraph 20 of the Counterclaim, but admit that Kestan has never shared his sexual exploits with the non-gay male AppealTech employees.

21. Counterclaim Defendants deny the allegations contained in Paragraph 21 of the Counterclaim, but admit that in 2014, Wallach offered to, and did, give injections to Kestan at Wallach's apartment and at a private office at AppealTech's offices.

22. Counterclaim Defendants deny the allegations contained in Paragraph 22 of the Counterclaim, but admit that in 2015, Wallach told Kestan that he would give Kestan a PrEP pill anytime upon request and that approximately two weeks later Kestan requested a PrEP pill from Wallach, but Wallach then refused to give Kestan a PrEP pill.

23. Counterclaim Defendants deny the allegations contained in Paragraph 23 of the Counterclaim, but admit that Kestan has never asked other employees of AppealTech for a PrEP pill and has never asked other employees of AppealTech for an injection of steroids.

24. Counterclaim Defendants deny the allegations contained in Paragraph 24 of the Counterclaim, but admit that Kestan has never exposed himself to any AppealTech employees.

25. Counterclaim Defendants deny the allegations contained in Paragraph 25 of the Counterclaim.

26. Counterclaim Defendants deny the allegations contained in Paragraph 26 of the Counterclaim.

27. Counterclaim Defendants deny the allegations contained in Paragraph 27 of the Counterclaim.

28. Counterclaim Defendants deny the allegations contained in Paragraph 28 of the Counterclaim.

29. Counterclaim Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29 of the Counterclaim, but admit that, at the time of Wallach's employment with AppealTech, AppealTech did not offer anti-harassment or anti-discrimination training seminars.

30. Counterclaim Defendants deny the allegations contained in Paragraph 30 of the Counterclaim.

31. Counterclaim Defendants deny the allegations contained in Paragraph 31 of the Counterclaim.

32. In response to Paragraph 32 of the Counterclaim, Counterclaim Defendants repeat and reassert their responses to the allegations contained in Paragraphs 1 through 31 of the Counterclaim as if set forth fully herein.

33. Paragraph 33 of the Counterclaim states legal conclusions to which no response is required.

34. Counterclaim Defendants deny the allegations contained in Paragraph 34 of the Counterclaim.

35. Paragraph 35 of the Counterclaim states legal conclusions to which no response is required. To the extent a response is deemed to be required, Counterclaim Defendants deny the allegations contained in Paragraph 35 of the Counterclaim.

36. Counterclaim Defendants deny the allegations contained in Paragraph 36 of the Counterclaim.

37. Counterclaim Defendants deny the allegations contained in Paragraph 37 of the Counterclaim.

38. Paragraph 38 of the Counterclaim states legal conclusions to which no response is required. To the extent a response is deemed to be required, Counterclaim Defendants deny the allegations contained in Paragraph 38 of the Counterclaim.

39. All allegations not expressly admitted are hereby denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Wallach's claims fail to state a claim upon which relief can be granted.

Second Affirmative Defense

Wallach's claims are barred by the statute of limitations.

Third Affirmative Defense

Wallach's claims are barred by the doctrine of unclean hands and Wallach's wrongful and culpable conduct.

Fourth Affirmative Defense

Wallach's claims are barred by the doctrines of waiver and estoppel.

Fifth Affirmative Defense

Wallach's claims are barred by Wallach's failure to mitigate his damages.

PRAYER FOR RELIEF

WHEREFORE, having replied to the Counterclaim, Counterclaim Defendants respectfully request, as follows:

- A. That the Counterclaim be dismissed with prejudice and that Wallach take nothing thereby;
- B. That the Court grant all of the relief sought by AppealTech in the Amended Complaint in this action; and
- C. That the Court grant the Counterclaim Defendants such other and further relief as the Court may deem just and proper.

Dated: January 22, 2019

**MOREA SCHWARTZ BRADHAM
FRIEDMAN & BROWN LLP**

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